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**CHILD DAY CARE
GENERAL LICENSING REQUIREMENTS**

This Users' Manual is issued as an operational tool.

This Manual contains

- a) Regulations adopted by the California Department of Social Services (CDSS) for the governance of its agents, licensees, and/or beneficiaries
- b) Regulations adopted by other State Departments affecting CDSS programs
- c) Statutes from appropriate Codes which govern CDSS programs
- d) Court decisions and
- e) Operational standards by which CDSS staff will evaluate performance within CDSS programs.

Regulations of CDSS are printed in gothic type as is this sentence.

Handbook material, which includes reprinted statutory material, other departments' regulations and examples, is separated from the regulations by double lines and the phrases "**HANDBOOK BEGINS HERE**", "**HANDBOOK ENDS HERE**" in bold print. Please note that both other departments' regulations and statutes are mandatory, not optional.

In addition, please note that as a result of the changes to a new computer system revised language in this manual letter and subsequent community care licensing manual letters will now be identified by graphic screen.

Questions relative to this Users' Manual should be directed to your local licensing agency.

CHAPTER 1 - CHILD DAY CARE GENERAL LICENSING REQUIREMENTS

Article 1. GENERAL REQUIREMENTS AND DEFINITIONS

101151 GENERAL

101151

- (a) The general regulations in this chapter shall apply to all child day care facilities regulated by Division 12, except where specifically exempted. Additional or special requirements found in the corresponding chapters pertaining to each category shall apply only to such individual facility categories.
- (b) The licensee shall ensure compliance with all applicable laws and regulations.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

101152 DEFINITIONS

101152

The following general definitions shall apply wherever the terms are used throughout Division 12, Chapter 1 and Chapter 2, except where specifically noted otherwise. Additional definitions found at the beginning of each chapter in this division shall apply only to such specific facility category.

- a.
 - (1) "Administrator" means the licensee, or the adult designated by the licensee to act in his/her behalf in the overall management of the facility.
 - (2) "Adult" means a person who is 18 years of age or older.
 - (3) "Applicant" means any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity that has made application for an initial or renewal child day care facility license.
 - (4) "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.

101152	DEFINITIONS (Continued)	101152
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- b. (1) "Basic Services" means those services required by applicable law and regulation to be provided by the licensee in order to obtain and maintain a child day care facility license.
- c. (1) "Capacity" means the maximum number of children authorized to be provided care and supervision at any one time in any licensed facility.
- (2) "Care and Supervision" means any one or more of the following activities provided by a person or facility to meet the needs of the children:
- (A) Assistance in dressing, grooming, bathing and other personal hygiene.
 - (B) Assistance with taking medication, as specified in Section 101326(e)(3).
 - (C) Central storing and/or distribution of medications, as specified in Section 101326(e).
 - (D) Arrangement of and assistance with medical and dental care.
 - (E) Maintenance of house rules for the protection of children.
 - (F) Supervision of children's schedules and activities.
 - (G) Monitoring food intake or special diets.
 - (H) Providing basic services as defined in Section 101152b.(1).
- (3) "Child" means a person who is under 18 years of age who is being provided care and supervision in a child day care facility, except where specified otherwise.
- (4) "Child Day Care Facility" means any facility, place or building where nonmedical care and supervision, as defined in Section 101152c.(2) is provided.

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- (A) Health and Safety Code Section 1596.750 states:

"Child day care facility" means a facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers and family day care homes.

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- (5) "Completed Application" means:

- (A) The applicant has submitted and the licensing agency has received all required materials including: an approved fire clearance, if appropriate, from the State Fire Marshal; a criminal record clearance on the applicant and any other individuals specified in Section 101170.

- (B) The licensing agency has completed a site visit to the facility.

- (6) "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property may include, but is not limited to the following:

- (A) a Grant Deed showing ownership; or

- (B) the lease agreement or rental agreement; or

- (C) a court order or similar document which shows the authority to control the property pending outcome of a probate proceeding or an estate settlement.

101152	DEFINITIONS (Continued)	101152
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- d. (1) "Day Care Center" means any child day care facility of any capacity, other than a family day care home as defined in Section 102352f.(1), in which less than 24-hour per day nonmedical care and supervision is provided for children in a group setting.
- (2) "Deficiency" means any failure to comply with any provision of the California Child Day Care Act (Health and Safety Code, Section 1596.70 et seq.) and/or regulations adopted by the Department pursuant to the Act.
- (3) "Department" is defined in Health and Safety Code Section 1596.77.

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- (A) Health and Safety Code Section 1596.77 reads:

"Department" means the State Department of Social Services.

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- (4) "Developmental Disability" means a disability as defined in Welfare and Institutions Code Section 4512(a).

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- (A) Welfare and Institutions Code Section 4512(a) provides in part: "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for such individual.

This term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

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- (5) "Dietitian" means a person who is a member of or registered by the American Dietetics Association.
- (6) "Director" is defined in Health and Safety Code Section 1596.770.

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- (A) Health and Safety Code Section 1596.770 reads:

"Director" means the Director of Social Services.

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101152 DEFINITIONS (Continued)**101152**

- e. (1) "Emergency Approval to Operate (LIC 9117 4/93) (EAO) means a temporary approval to operate a facility for no more than 60 days pending the Department's decision on whether to approve or deny a provisional license.
- (2) "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department, including any officer, employee or agent of a county or other public agency authorized by the Department to license child day care facilities.
- (3) "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary or a letter from the attending physician or coroner's office verifying the licensee's death.
- (4) "Exception" means a written authorization issued by the licensing agency to use alternative means which meet the intent of a specific regulation(s) and which are based on the unique needs or circumstances of a specific child(ren) or staff person(s). Exceptions are granted for a particular child(ren) or staff person(s) and are not transferable or applicable to other children, staff person(s), facilities or licensees.
- (5) "Exemption" means an exception to the requirements of Health and Safety Code Section 1596.871 and applicable regulations. Exemptions are not transferable.

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- (A) Health and Safety Code Section 1596.871(c)(5) reads in part:

Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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101152	DEFINITIONS (Continued)	101152
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- (6) "Existing Facility" means any child day care facility operating under a valid, unexpired license on the date this chapter becomes effective.
- f. (Reserved)
- g. (1) "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Sections 1500 et seq. of the Probate Code to care for the person, or estate, or the person and estate of another.
- h. (1) "Home Economist" means a person who holds a baccalaureate degree in home economics with a specialization in either foods and nutrition or dietetics.
- i. (1) "Infant" means a child under two years of age.
- j. (Reserved)
- k. (Reserved)
- l. (1) "License" means authorization to operate a child day care facility and to provide care and supervision. The license is not transferable.
- (2) "Licensee" means the adult, firm, partnership, association, corporation, county, city, public agency, or other governmental entity having the authority and responsibility for the operation of a licensed child day care facility.

101152	DEFINITIONS (Continued)	101152
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- (3) "Licensing Agency" means the California Department of Social Services or any state, county or other public agency authorized by the Department to assume specified licensing responsibilities pursuant to Section 1596.82 of the Health and Safety Code.
- m. (1) "Mental Disorder" means any of the disorders set forth in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) of the American Psychiatric Association and a degree of functional impairment which renders a person eligible for the services enumerated under the Lanterman-Petris-Short Act, commencing with Section 5000 of the Welfare and Institutions Code.
- n. (1) "Nonambulatory Person" means a person as defined in Health and Safety Code Section 13131.
- (A) "A person who uses supportive restraints as specified in Section 101223(a)(7) is deemed nonambulatory.
- (B) A person is not deemed nonambulatory solely because he/she is deaf, blind, or prefers to use a mechanical aid.

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- (C) Health and Safety Code Section 13131 provides:

"Nonambulatory persons" means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. The determination of ambulatory or nonambulatory status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative. The determination of ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984, who are not developmentally disabled shall be made by the Director of Social Services or his or her designated representative.

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101152 DEFINITIONS (Continued)**101152**

- (2) "Nutritionist" means a person who holds a master's degree in food and nutrition, dietetics, or public health nutrition, or who is employed as a nutritionist by a county health department.

o. (Reserved)

p. (1) "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.

- (2) "Provision" or "Provide" means whenever any regulation requires that provisions be made for or that there be provided any service, personnel, or other requirement, the licensee shall do so directly or present evidence to the licensing agency that the requirement has been met by some other means.

- (3) "Provisional License" means a license which is temporary, nonrenewable and issued for a period not to exceed twelve months. A provisional license is issued in accordance with the criteria specified in Section 101181.

q. (Reserved)

r. (1) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

s. (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the children in a child day care facility.

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- (A) See Section 101202.

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- (2) "Substantial Compliance" means the absence of any serious deficiencies.
- t. (1) "Toddler Component" means the component of a preschool or infant care program designed for children between the ages of 18 months and 30 months.
- u. (1) "Urgent Need" means a situation where prohibiting the operation of the facility would be detrimental to a child's physical health, mental health, safety, or welfare. Circumstances constituting urgent need include but are not limited to the following:
- (A) A change in facility location when children are in need of services from the same operator at the new location.
- (B) A change of facility ownership when children are in need of services from a new operation.
- v. (Reserved)
- w. (1) "Waiver" means a nontransferable written authorization issued by the licensing agency to use alternative means which meet the intent of a specific regulation and which are based on a facility-wide need or circumstance.
- x. (Reserved)
- y. (Reserved)
- z. (Reserved)

NOTE: Authority cited: Sections 1596.81 and 1596.858(e), Health and Safety Code. Reference: Sections 1502, 1596.72, 1596.73, 1596.74, 1596.75, 1596.750, 1596.76, 1596.77, 1596.770, 1596.78, 1596.79, 1596.790, 1596.791, 1596.81, 1596.858(e), 1596.955, and 1596.956, Health and Safety Code; and Section 11006.9, Welfare and Institutions Code.

Article 2. LICENSING

101156 LICENSE REQUIRED 101156

- (a) Unless a facility is exempt from licensure as specified in Section 101158, no adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity shall operate, establish, manage, conduct or maintain a child day care facility, or hold out, advertise or represent by any means to do so, without first obtaining a license from the licensing agency.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.80, 1596.81(b), 1596.805, 1596.84 and 1596.85, Health and Safety Code.

101157 OPERATION WITHOUT A LICENSE 101157

- (a) If an unlicensed facility is providing care and supervision as defined in Section 101152c.(2), the facility is in violation of Section 1596.80 of the Health and Safety Code unless exempted from licensure pursuant to Section 101158.
- (b) If the facility is alleged to be in violation of Section 1596.80 of the Health and Safety Code, the licensing agency shall conduct a site visit and/or evaluation of the facility pursuant to Health and Safety Code Section 1596.853.

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- (1) Health and Safety Code Section 1596.80 states:

No person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility in this state without a current valid license therefor as provided in this act.

- (2) Health and Safety Code Section 1596.853(c) provides in part:

Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

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101157	OPERATION WITHOUT A LICENSE (Continued)	101157
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- (c) If the facility is operating without a license, the licensing agency shall issue a Notice of Operation in Violation of Law and shall refer the case for criminal prosecution and/or civil proceedings.
- (d) The licensing agency shall have the authority to issue an immediate civil penalty pursuant to Section 101209 and Section 1596.891 of the Health and Safety Code.

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Health and Safety Code Section 1596.891 states in part:

- (a) A person who violates Section 1596.80 may be liable for an immediate assessment of civil penalties in the amount of two hundred dollars (\$200) per day.
- (b) The penalty specified in subdivision (a) shall be imposed if the operator of an unlicensed facility refuses to seek licensure or the operator seeks licensure and is denied but continues to operate.

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- (e) Sections 101157(c) and (d) shall be applied pursuant to Section 1596.892 of the Health and Safety Code.

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Health and Safety Code Section 1596.892 states:

The civil, criminal, and administrative remedies available to the Department pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the Department to enforce the provisions of this chapter.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.792, 1596.80, 1596.81(b), 1596.89, 1596.890, 1596.891 and 1596.892, Health and Safety Code.

101158	EXEMPTION FROM LICENSURE	101158
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- (a) The child day care facility regulations contained in this division shall not apply to any of the following, as specified in Health and Safety Code Section 1596.792:

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- (1) Any health facility, as defined by Section 1250 of the Health and Safety Code.
- (2) Any clinic, as defined by Section 1202 of the Health and Safety Code.
- (3) Any community care facility, as defined by Section 1502 of the Health and Safety Code.
- (4) Any family day care home providing care for the children of only one family in addition to the operator's own children.
- (5) Any cooperative arrangement between parents for the care of their children where no payment is involved and the arrangement meets all of the following conditions:
 - (A) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible care giver with respect to all the children in the cooperative.
 - (B) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.
 - (C) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of that may not exceed the actual cost of the activity.
 - (D) No more than 12 children are receiving care in the same place at the same time.
- (6) Any arrangement for the receiving and care of children by a relative.

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(7) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(A) The program is operated only during hours other than normal school hours for grades K-12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

1. For under 16 hours per week.
2. For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the California Department of Social Services shall, where appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(B) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

1. For under 16 hours per week.
2. For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(C) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

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101158	EXEMPTION FROM LICENSURE (Continued)	101158
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- (8) Public and private schools which operate a program before and/or after school for school-age children providing all of the following conditions are met:
- (A) The program offered by a school must be operated by the school and run by qualified teachers employed by the school or the school district.
 - (B) An outside organization or individual using a public or private school site to operate child care program is subject to licensure, even if the program is open only to the children enrolled at that school.

HANDBOOK BEGINS HERE

- (9) Any school parenting program or adult education child care program that satisfies both of the following:
- (A) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.
 - (B) Is not operated by an organization specified in Section 1596.793.
 - 1. Health and Safety Code Section 1596.793 states:

This Chapter and Chapter 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, Camp Fire, or similar organizations as determined by regulations of this department. Child day care programs conducted by these organizations and the fees charged for that specific purpose are subject to the requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).
- (10) Any child day care program that operates only one day per week for no more than four hours on that one day.

HANDBOOK CONTINUES

HANDBOOK CONTINUES

- (11) Any child day care program that offers temporary child care services to parents and which satisfies both of the following:
- (A) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.
 - (B) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.
- (12) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:
- (A) Is operated only during periods of the year when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.
 - (B) Offers any number of sessions during the period specified in paragraph (A) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.792, 1596.793 and 1596.81(b), Health and Safety Code.

101159	LICENSING OF INTEGRAL FACILITIES	101159
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- (a) Upon written application from the licensee, the licensing agency shall have the authority to issue a single license for separate buildings which might otherwise require separate licenses provided that all of the following requirements are met:
- (1) Separate buildings or portions of the facility are integral components of a single program.
 - (2) All components of the program are managed by the same licensee.
 - (3) All components of the program are conducted at a single site with a common address.
- (b) If (a) above does not apply, each separately licensed component of a single program shall be capable of independently meeting the provisions of applicable regulations as determined by the licensing agency.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.73 and 1596.80, Health and Safety Code.

101161	LIMITATIONS ON CAPACITY AND AMBULATORY STATUS	101161
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- (a) A licensee shall not operate a facility beyond the conditions and limitations specified on the license, including the capacity limitation.
- (b) Facilities or rooms approved for ambulatory children only shall not be used by nonambulatory children.
- (1) Children whose condition becomes nonambulatory shall not use rooms or areas restricted to ambulatory children.
 - (2) The licensing agency shall have the authority to require children who use ambulatory sections of the facility to demonstrate that they are ambulatory.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81(b) and 1596.95, Health and Safety Code.

101162	ADVERTISEMENTS AND LICENSE NUMBER	101162
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- (a) Licensees shall reveal each facility license number in all advertisements in accordance with Health and Safety Code Section 1596.861.

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- (1) Health and Safety Code, Section 1596.861 provides:
- (a) Each child day care facility licensed under this chapter, or Chapter 3.5, Chapter 3.6 shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients.
- (b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) include, but are not limited to, those contained in the following:
- (1) Newspaper or magazine.
- (2) Consumer report.
- (3) Announcement of intent to commence business.
- (4) Telephone directory yellow pages.
- (5) Professional or service directory.
- (6) Radio or television commercial.

HANDBOOK ENDS HERE

- (b) Correspondence shall be considered a form of advertisement if the intent is to attract clients.
- (c) Licensees who operate more than one facility and use a common advertisement for these facilities shall be required to list each facility license number in accordance with Health and Safety Code Section 1596.861.

NOTE: Authority cited: Section 1596.81(a), Health and Safety Code. Reference: Section 1596.861, Health and Safety Code.

101163	FALSE CLAIMS	101163
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- (a) No licensee, officer, or employee of a licensee shall make or disseminate any false or misleading statement regarding the facility or any of the services provided by the facility.
- (b) No licensee, officer, or employee of a licensee shall alter a license, or disseminate an altered license.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1596.95, Health and Safety Code.

Article 3. APPLICATION PROCEDURES

101168 APPLICANT QUALIFICATIONS 101168

- (a) Any adult shall be permitted to apply for a license regardless of age, sex, race, religion, color, political affiliation, national origin, handicap, marital status or sexual orientation.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

101169 APPLICATION FOR LICENSE 101169

- (a) Any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity desiring to obtain a license shall file with the licensing agency a verified application on forms furnished by the licensing agency.
- (1) Applicants for licensure of a combination center shall be permitted to file one application.
- (A) Licensees requesting the addition of a toddler component to their preschool or infant care program must submit an amended application. The toddler program component shall be considered an extension of the preschool or infant care license.
- (b) Prior to filing an application, the applicant shall attend an orientation provided by the licensing agency.
- (1) The orientation shall cover, but not be limited to, the following areas:
- (A) Completion of the application for license.
- (B) Scope of operation subject to regulation by the department.
- (2) An applicant, who is already licensed for a facility, shall not be required to attend an orientation if the last orientation attended was within two (2) years of the next scheduled orientation.
- (3) An applicant applying for more than one facility license shall be required to attend only one orientation.
- (c) The applicant/licensee shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency.

101169	APPLICATION FOR LICENSE (Continued)	101169
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(d) The application and supporting documents shall contain the following:

- (1) Name or proposed name and address of facility.
- (2) Name, and residence and mailing addresses of applicant.
 - (A) If the applicant is a partnership, the name, and principal business address of each partner.
 - (B) If the applicant is a corporation or association, the name, title and principal business address of each officer and member of the governing board.
 - (C) If the applicant is a corporation which issues stock, the name and address of each person owning more than 10 percent of stock in such corporation.
 - (D) If the applicant is a corporation or association, a copy of the articles of incorporation, constitution and by-laws.
- (3) Name and address of owner of facility premises if applicant is leasing or renting.
- (4) The category of facility to be operated.
- (5) Maximum number of children to be served.
- (6) Age range, sex and the categories of children to be served, including but not limited to children with developmental disabilities, mental disorders, physical handicapped and/or nonambulatory children.
- (7) Hours or periods of facility operation.
- (8) Name of administrator.
- (9) Information required by Health and Safety Code Section 1596.95(d).

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1596.95(d) provides:

Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in any child day care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500).

HANDBOOK ENDS HERE

- (10) Information required by Health and Safety Code Section 1596.95(e).
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HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1596.95(e) provides in general:

Disclosure of revocation or other disciplinary action taken or in the process of being taken against a license held or previously held by the entities specified in Health and Safety Code Section 1596.95(d) above.

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- (11) Name, address and telephone number of the city or county fire departments, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.
- (12) A plan of operation as specified in Section 101173.
- (13) Fingerprint cards as specified in Section 101170.
- (14) Information required by Health and Safety Code Section 1596.877.

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1596.877 provides:
- (1) Prior to granting a license to any individual to or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.
 - (2) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code.
 - (3) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

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- (15) A health screening report on the applicant as specified in Section 101216(g).
- (16) Such other information as may be required pursuant to Section 1596.95(f) of the Health and Safety Code.

101169	APPLICATION FOR LICENSE (Continued)	101169
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- (A) Health and Safety Code Section 1596.95(f) provides:

Such other information as may be required by the department for the proper administration and enforcement of this act.

HANDBOOK ENDS HERE

- (e) The application shall be signed by the applicant.
- (1) If the applicant is a partnership, the application shall be signed by each partner.
- (2) If the applicant is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or authorized representative.
- (f) The application shall be filed with the licensing agency which serves the geographical area in which the facility is located.

NOTE: Authority cited: Section 1596.81 Health and Safety Code. Reference: Sections 1596.81(b), 1596.83, 1596.856, 1596.877, 1596.95, 1596.955, and 1596.956, Health and Safety Code.

101170 CRIMINAL RECORD CLEARANCE 101170

- (a) The licensing agency shall conduct a criminal record review of all persons specified in Health and Safety Code Section 1596.871(b) and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.

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- (1) Section 1596.871(a) of the Health and Safety Code states:

Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license or for obtaining a criminal record of such an applicant pursuant to this section. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.

- (2) Section 1596.871(b) of the Health and Safety Code provides in part:

In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a child, residing in the facility.
- (C) Any person who provides care and supervision to the children.

HANDBOOK CONTINUES

CHILD DAY CARE		
101170 (Cont.)	GENERAL LICENSING REQUIREMENTS	Regulations
101170	CRIMINAL RECORD CLEARANCE (Continued)	101170

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- (D) Any staff person or employee who has frequent and routine contact with the children. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of children in care. In determining who has routine contact, staff and employees under direct on site supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with children shall be exempt.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.
- (F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.
- (G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.
- (H) This section does not apply to adult volunteers or adult staff employed by the applicant on an intermittent basis for less than 10 days per month, provided that these adults are under constant supervision by adults who meet the requirements of this section.

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- (I) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the State Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a California Department of "Education contract." The State Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.
- (J) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the California Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

HANDBOOK ENDS HERE

- (b) A fingerprint clearance shall be received by the licensing agency on the applicant, administrator and all adults residing in the facility prior to issuing a license.
- (c) All persons subject to criminal record review shall, prior to employment, residence or initial presence in the facility be fingerprinted and sign a statement regarding prior criminal convictions as specified in Section 101216(i).
- (1) Completed fingerprint card(s) shall be submitted to the Department of Justice as specified in Health and Safety Code, Section 1596.871(c).

HANDBOOK BEGINS HERE

- (2) Section 1596.871(c) of the Health and Safety Code provides in part:
- (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the child day care facility.
 - (B) These fingerprints shall be on a card provided by the California Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the California Department of Social Services for processing...

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- (d) In determining whether individuals must submit fingerprint card(s) as specified in Health and Safety Code Section 1596.871(b), the licensing agency shall consider the following:
- (1) Anticipated type and degree of contact with the children.
 - (2) Supervision received by the employee or volunteer.
 - (3) Duties of the employee or volunteer.
 - (4) Whether the facility constitutes the legal residence or the place an adult lives the majority of the time.

HANDBOOK BEGINS HERE

(5) Section 1596.871(h) of the Health and Safety Code states:

(A) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another as long as the criminal record clearance has been processed through a state licensing district office and is being transferred to another state licensing district office.

(B) The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (e) The reasons for any exemption granted shall be in writing and kept by the licensing agency.
- (f) If the criminal record transcript of any of the persons specified in Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was \$50 or less before April 5, 1984 or pursuant to paragraph (1) subdivision (a) of Section 42001 of the Vehicle Code after April 4, 1984, the licensing agency shall take the following actions:
- (1) For initial applicants, denial of the application.
 - (2) For current licensees, denial of the renewal application or institution of other legal remedies, including but not limited to revocation of the license.
 - (3) For current or prospective employees, denial of the application or revocation of the license if the person continues to provide services and/or reside at the facility.
 - (4) For convicted persons residing in the facility including spouses of the applicant, licensee, or employee, denial of the application or revocation of the license if the person continues to provide services and/or reside at the facility.

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- (5) Section 1596.871(c)(3) of the Health and Safety Code provides in part:
- (A) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 243.4, 273a, 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.
 - (B) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.
 - (C) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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- (6) Section 1596.871(e) of the Health and Safety Code provides in part:

The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

- (7) Section 243.4 of the Penal Code provides in part:

- (A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

- (8) Section 273a of the Penal Code provides:

- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

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101170	CRIMINAL RECORD CLEARANCE (Continued)
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- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.
- (9) Section 273d of the Penal Code provides:
- (A) Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.
- (10) Section 368 of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

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101170	CRIMINAL RECORD CLEARANCE (Continued)	101170
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- (g) After a review of the criminal record transcript, the licensing agency or the Department shall have the authority to grant an exemption from (f) above if such person requests an exemption in writing and presents evidence satisfactory to the Department or licensing agency that he/she has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the facility.
- (1) The licensing agency shall have the authority to consider factors including but not limited to the following as evidence of good character and rehabilitation:
- (A) The nature of the crime.
 - (B) Period of time since the crime was committed and number of offenses.
 - (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (D) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (E) Granting by the Governor of a full and unconditional pardon.
 - (F) Character references.
 - (G) A certificate of rehabilitation from a superior court.

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- (2) Section 1596.871(f) of the Health and Safety Code provides in part:

No exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4 or 264.1 or subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a or Section 273d or Section 288, 289 or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

- (A) Section 667.5(c) of the Penal Code provides in part:

For the purpose of this section, "violent felony" shall mean any of the following:

1. Murder or voluntary manslaughter.
2. Mayhem.
3. Rape as defined in subdivision (2) of Section 261.
4. Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
5. Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
6. Lewd acts on a child under 14 as defined in Section 288.
7. Any felony punishable by death or imprisonment in the state prison for life.

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8. Any other felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.
9. Any robbery perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.
10. Arson, in violation of subdivision (a) of Section 451.
11. The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
12. Attempted murder.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code; and Section 42001, Vehicle Code.

101171	FIRE CLEARANCE	101171
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- (a) All facilities shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.
- (1) The request for fire clearance shall be made through and maintained by the licensing agency.
- (b) The applicant shall notify the licensing agency if the facility plans to admit children who are nonambulatory, as defined in Section 101152n.(1) so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, can be obtained prior to the acceptance of such children.

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- (1) Persons who use supportive restraints pursuant to Section 101223(a) (7) are nonambulatory.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.95, Health and Safety Code.

101172	WATER SUPPLY CLEARANCE	101172
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(a) All child day care facilities where water for human consumption is from a private source shall meet the following requirements:

- (1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis which establishes the safety of the water, conducted by the local health department, the State Department of Health Services or a licensed commercial laboratory.
- (2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the children, but no less frequently than specified in the following table:

LICENSED CAPACITY	ANALYSIS REQUIRED	PERIODIC SUBSEQUENT ANALYSIS
6 or fewer	Initial licensing	Not required unless evidence supports the need for such analysis to protect children.
7 through 15	Initial licensing	Annually
16 through 24	Initial licensing	Semiannually
25 or more	Initial licensing	Quarterly

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101173	PLAN OF OPERATION	101173
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- (a) Each licensee shall have and maintain on file a current, written, definitive plan of operation.
- (b) The plan and related materials shall contain the following:
 - (1) Statement of purposes, and program methods and goals.
 - (2) Statement of admission policies and procedures regarding acceptance of children.
 - (3) A copy of the admission agreement.
 - (4) Administrative organization, if applicable.
 - (5) Staffing plan, qualifications and duties, if applicable.
 - (6) Plan for inservice education of staff if required by regulations governing the specific facility category.
 - (7) A sketch of the building(s) to be occupied, including a floor plan which describes the capacities of the buildings for the uses intended, room dimensions, and a designation of the rooms to be used for nonambulatory children, if any.
 - (8) A sketch of the grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the children.
 - (A) The sketch shall include the dimensions of all areas which will be used by the children.
 - (9) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.
 - (10) Transportation arrangements for children who do not have independent arrangements.

101173	PLAN OF OPERATION (Continued)	101173
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- (11) Rate setting policy including, but not limited to, policy on refunds.
- (12) Consultant and community resources to be utilized by the facility as part of its program.
- (c) Any changes in the plan of operation which affect the services to children shall be subject to licensing agency approval and shall be reported as specified in Section 101212.
- (d) The facility shall operate in accordance with the terms specified in the plan of operation.

NOTE: Authority cited: Section 1596.81, Health and Safety Code: Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101174	DISASTER AND MASS CASUALTY PLAN	101174
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- (a) Each licensee shall have and maintain on file a current, written disaster and mass casualty plan of action.
- (b) The plan shall be subject to review by the licensing agency and shall include:
 - (1) Designation of administrative authority and staff assignments.
 - (2) Contingency plans for action during fires, floods, and earthquakes, including but not limited to the following:
 - (A) Means of exiting.
 - (B) Transportation arrangements.
 - (C) Relocation sites which are equipped to provide safe temporary accommodation for children.
 - (D) Arrangements for supervision of children during evacuation or relocation, and for contact after relocation to ensure that relocation has been completed as planned.
 - (E) Means of contacting local agencies, including but not limited to the fire department, law enforcement agencies, and civil defense and other disaster authorities.

101174	DISASTER AND MASS CASUALTY PLAN (Continued)	101174
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- (c) The licensee shall instruct all children, age and abilities permitting, all staff, and/or members of the facility in their duties and responsibilities under the plan.
- (d) Disaster drills shall be conducted at least every six months.
 - (1) Completion of such drills shall not require travel away from the facility grounds or contact with local disaster agencies.
 - (2) The drills shall be documented and the documentation maintained in the facility for at least one year.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101175	WAIVERS AND EXCEPTIONS	101175
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- (a) Unless prior written licensing agency approval is received as specified in (b) below, all licensees shall maintain continuous compliance with the licensing regulations.
- (b) The licensing agency shall have the authority to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects under the following circumstances:
 - (1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any facility child.
 - (2) The applicant or licensee shall submit to the licensing agency a written request for a waiver or exception, together with substantiating evidence supporting the request.

101175	WAIVERS AND EXCEPTIONS (Continued)	101175
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- (3) In determining the merits of each request, the licensing agency shall use as guidelines the standards utilized or recommended by well-recognized state and national organizations, as available or determined appropriate by the licensing agency.

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- (4) The licensing agency shall provide written approval or denial of the request.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

101178	INITIAL APPLICATION REVIEW	101178
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- (a) If the applicant has not submitted all materials specified in Section 101169 within 90 days of receipt of the application by the licensing agency, the licensing agency shall give written notice to the applicant that the application is incomplete and shall describe what materials are required to be submitted in order to constitute a completed application.
- (1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn provided that the licensing agency has not denied or taken action to deny the application.
- (A) The above requirement shall not apply to facilities under construction.
- (b) The licensing agency shall cease review of any application under the conditions specified in Section 1596.851 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1596.851 provides:
- (a) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500), or Chapter 3.3 (commencing with Section 1569) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. Cessation of review shall not constitute a denial of the application.
- (b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied within the last year, the department shall cease further review of the application under either of the following circumstances as follows:
- (1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.
- (2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1596.879 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

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The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which have been corrected or are no longer in existence. The cessation of review shall not constitute a denial of the application.

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- (2) "Application was denied within the last year" as specified in Health and Safety Code Section 1596.851(b) shall include initial or renewal applications.
- (3) The circumstances and conditions in which the licensing agency may continue to review a previously denied application shall include, but are not limited to, the following:
 - (A) A fire clearance previously denied, but now approved;
 - (B) An Administrator who did not meet the minimum qualifications, but now fulfills the qualifications; or
 - (C) A person with a criminal record, which was the basis for license denial, is no longer associated with the facility.
- (4) This review shall not constitute approval of the application.
- (5) If cessation of review occurs, the application shall be returned to the applicant. It shall be the responsibility of the applicant to request resumption of review as specified in Health and Safety Code Section 1596.851.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.83, 1596.851 and 1596.95, Health and Safety Code.

101179	CAPACITY DETERMINATION	101179
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- (a) A license shall be issued for a specific capacity.
- (b) The number of children for whom the facility is licensed to provide care and supervision shall be determined on the basis of the application review by the licensing agency, which shall take into consideration the following:
 - (1) The fire clearance specified in Section 101171.
 - (2) The licensee's/administrator's ability to comply with applicable law and regulation.

101179	CAPACITY DETERMINATION (Continued)	101179
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- (3) Any other household members, including but not limited to persons under guardianship or conservatorship, who reside at the facility and their individual needs.
- (4) Physical features of the facility, including available living space, which are necessary in order to comply with regulations.
- (5) Number of available staff to meet the care and supervision needs of the children.
- (6) Any restrictions pertaining to the specific category of facility.
- (c) The licensing agency shall be authorized to issue a license for fewer children than is requested when the licensing agency determines that:
 - (1) The licensee's responsibilities to other persons in the facility, including persons under guardianship and conservatorship, would preclude provision of the care required by these regulations.
- (d) When the license is issued for fewer children than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision as specified in Section 101191.
- (e) The licensing agency shall have the authority to decrease existing licensed capacity with the licensee's agreement, when there is a change in any of the factors specified in (b) above.
 - (1) If the licensee does not agree to the decrease in capacity, the licensing agency shall have the authority to initiate revocation action as specified in Section 101193.

101179	CAPACITY DETERMINATION (Continued)	101179
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- (f) The licensing agency shall be authorized to restrict care to specific individuals.
- (1) If care and supervision is limited to specific individuals, the licensing agency shall specify the names of the individuals in a letter to the licensee.
 - (2) Except where the limitation is requested by the licensee, the licensee shall be notified in writing of the reasons for such limitation and of the licensee's right to appeal the decision as specified in Section 101191.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

101180	WITHDRAWAL OF APPLICATION	101180
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- (a) An applicant shall have the right to withdraw an application for an initial or renewal license.
- (1) Such withdrawal shall be in writing.

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- (b) Health and Safety Code Section 1596.854 provides in part:

The department shall not be deprived of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law, or to enter an order denying the license upon any such ground, unless it has consented in writing to such withdrawal.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Section 1596.854, Health and Safety Code.

101181	PROVISIONAL LICENSE	101181
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- (a) The licensing agency shall have the authority to issue a provisional license to an applicant, pending action under Sections 101182 or 101191 on a completed application for an initial license, if it determines that all of the following circumstances exist:
- (1) The facility is in substantial compliance with applicable law and regulation.
 - (2) An urgent need for licensure exists.
- (b) The capacity of a provisional license shall be limited to the number of children for whom urgent need has been established, or the capacity established for the specific facility, whichever is less.
- (c) The licensing agency shall have the authority to issue a provisional license for a maximum of six months when it determines that full compliance with licensing regulations will be achieved within that time period.
- (d) The licensing agency shall have the authority to issue a provisional license for a maximum of 12 months when it determines, at the time of application, that more than six months is required to achieve full compliance with the licensing regulations due to circumstances beyond the control of the applicant.
- (e) If, during the provisional license period, the licensing agency discovers any serious deficiencies, the Department shall have the authority to institute administrative action or civil proceedings, or to refer the case for criminal prosecution.
- (f) A provisional license shall not be renewable and shall terminate on the date specified on the license, or upon denial of the application, whichever is earlier.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.84, Health and Safety Code.

101182	ISSUANCE OF LICENSE	101182
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- (a) The licensing agency shall issue a license to an applicant in accordance with the provisions of Health and Safety Code Section 1597.11 after a completed application has been compiled and upon determination that all licensing requirements have been met.

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- (1) Health and Safety Code Section 1597.11 states:

The department and any local agency with which it contracts for the licensing of day care centers shall grant or deny an application for license within 30 days after receipt of all appropriate licensing application materials, as determined by the department, after a site visit has been completed and the facility has been found to be in compliance with licensing standards. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

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- (b) Issuance of a license shall constitute written notice that the application is complete and has been granted.
- (c) No limitation shall be imposed on the licensee or printed on the license solely on the basis that a licensee is a parent who has administered or will continue to administer corporal punishment, not constituting child abuse as defined in Section 11165, subdivision (g) of the Penal Code, or Section 1531.5(c) of the Health and Safety Code, on his/her own child(ren).

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- (1) Whenever possible, the licensee shall not use corporal punishment on his/her own children in the presence of other children.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1596.95, Health and Safety Code.

101184	APPLICATION FOR RENEWAL OF A LICENSE	101184
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- (a) An application for the renewal of a license shall be filed on a form provided by the licensing agency not less than thirty (30) days prior to the license expiration date or at the time of initial application.
- (b) The renewal license shall be granted if a licensee files a renewal application within the time specified in (a) above unless the application has been denied, as specified in Section 101192.
- (c) Pending the issuance of a renewal license pursuant to (b) above, the current license shall remain in effect.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1596.95, Health and Safety Code.

101185	SUBMISSION OF NEW APPLICATION	101185
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- (a) A licensee shall file a new application as required by Section 101169 whenever there is a change in conditions or limitations described on the current license, or other changes including but not limited to the following:
 - (1) Any change in the location of the facility.
 - (2) Any change of licensee, including but not limited to the following when the licensee is a corporation.
 - (A) Sale or transfer of the majority of stock.
 - (B) Separating from a parent company.
 - (C) Merger with another company.
 - (3) Any change in facility category.
 - (A) A licensee wishing to add a toddler component to its existing preschool or infant care program must submit an amended application.

101185	SUBMISSION OF NEW APPLICATION (Continued)	101185
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- (4) Any increase in capacity.
 - (A) The licensing agency shall have the authority to grant capacity increases without resubmission of an application following a licensing agency review and the securing of an appropriate fire clearance.
- (5) A permanent change in any child from ambulatory to nonambulatory status.
- (b) A new application as required by Section 101169 shall be filed whenever an applicant fails to complete a new application within the time limit required by Section 101178(a) if the applicant chooses to continue the application process.
- (c) A new application as required by Section 101169 shall be filed whenever a licensee fails to file a renewal application within the time limit required by Section 101184(a).

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.955, and 1596.956, Health and Safety Code.

101186	CONDITIONS FOR FORFEITURE OF A CHILD DAY CARE FACILITY LICENSE	101186
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- (a) Conditions for forfeiture of a child day care facility license shall be as specified in Section 1596.858 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1596.858 reads in part:

A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership allies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change in ownership.

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101186	CONDITIONS FOR FORFEITURE OF A CHILD DAY CARE FACILITY LICENSE (Continued)	101186
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- (b) The licensee surrenders the license to the department.
- (c) The licensee moves the facility from one location to another.
- (d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.
- (e) The licensee dies.
- (f) The licensee abandons the facility.

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- (2) "Licensee abandons the facility" shall mean either of the following:
 - (A) The licensee informs the licensing agency that the licensee no longer accepts responsibility for the facility, or
 - (B) The licensing agency is unable to determine the licensee's whereabouts after the following:
 - 1. The licensing agency requests information of the licensee's whereabouts from the facility's staff if any staff can be contacted; and
 - 2. The licensing agency has made at least one (1) phone call per day, to the licensee's last telephone number of record, for five (5) consecutive workdays with no response; and
 - 3. The licensing agency has sent a certified letter, requesting the licensee to contact the licensing agency, to the licensee's last mailing address of record with no response within seven (7) calendar days.

101186	CONDITIONS FOR FORFEITURE OF A CHILD DAY CARE FACILITY LICENSE (Continued)	101186
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- (b) If the facility licensee dies, an adult relative who has control of the property shall be permitted to operate a previously licensed facility under an Emergency Approval to Operate (LIC 9117 4/93) (EAO) providing the following conditions are met:
- (1) The relative or an adult acting on the relative's behalf notifies the Department by telephone during the first working day after the licensee's death that the relative intends to operate the community care facility.
 - (2) The relative files with the Department within five calendar days of the licensee's death an Application for License (LIC 200A 8/92) and evidence of the licensee's death as defined in Section 101182(e)(3).
 - (A) Notwithstanding the instructions on the Application for License (LIC 200A 8/92), the Department shall permit the relative to submit only the information on the front side of that form.
 - (3) The relative files with the California Department of Justice within five calendar days of the licensee's death his/her fingerprint cards.
- (c) If the adult relative complies with (b)(1) and (2) above, he/she shall not be considered to be operating an unlicensed facility pending the Department's decision on whether to approve a provisional license.
- (d) The Department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 101181.
- (1) A provisional license shall be granted only if the Department is satisfied that the conditions specified in (b) above and Section 101181 have been met and that the health and safety of the residents of the facility will not be jeopardized.

NOTE: Authority cited: Sections 1596.81 and 1596.858(e), Health and Safety Code. Reference: Sections 1596.845, 1596.858, and 1596.858(e), Health and Safety Code.